FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 63

[GN Docket No. 13-5, RM-11358; WC Docket No. 05-25, RM-10593; FCC 15-97]

Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers and Special Access for Price Cap Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission takes further action on a rulemaking it initiated in January 6, 2015, to help guide and accelerate the technological revolutions that are underway involving the transitions from networks based on TDM circuit-switched voice services running on copper loops to all-IP multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. This Further Notice of Proposed Rulemaking (FNPRM) is only one of a series of Commission actions to protect core values and ensure the success of these technology transitions. In this

FNPRM, we take steps to ensure that competition continues to thrive and to protect consumers during transitions. These steps will help to ensure that the technology transitions continue to succeed.

DATES: Submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Submit reply comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, by any of the following methods:

- Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michele Levy Berlove, Wireline Competition Bureau, Competition Policy Division, (202) 418-1477, or send an email to michele.berlove@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, FCC 15-97, adopted August 6, 2015 and released August 7, 2015. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. It is available on the Commission's Web site at http://www.fcc.gov.

I. INTRODUCTION

1. Communications networks are rapidly transitioning away from the historic provision of time-division multiplexed (TDM) services running on copper to new, all-Internet Protocol (IP) multimedia networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. Our actions today further the technology transitions underway in our Nation's fixed communications networks that offer the prospect of innovative and improved services to consumers and businesses alike. The core goals of the January 2014 Technology Transitions Order frame our approach here. In the Technology Transitions Order, we emphasized the importance of speeding market-driven technological transitions and innovations while preserving the core statutory values as codified by Congress: competition, consumer protection, universal service, and public safety. Furthering these core values will accelerate customer adoption of technology transitions. Today, we take the next step in advancing longstanding competition and consumer protection policies on a technologically-neutral basis in

order to ensure that the deployment of innovative and improved communications services can continue without delay.

2. Industry is investing aggressively in modern telecommunications networks and services. Overall, according to data supplied by USTelecom and AT&T, capital expenditures by broadband providers topped $75 billion in 2013 and continue to increase. AT&T recently announced that by the year 2020, 75 percent of its network will be controlled by software. To do this, AT&T is undergoing a massive effort to train about 130,000 of its employees on software-defined networking architecture and protocols. AT&T has also expanded its wireline IP broadband network to 57 million customer locations, as well as extended fiber to 725,000 business locations. Moreover, Verizon passes more than 19.8 million premises with its all-fiber network — the largest such network in the country — and it projects that soon about 70 percent of the premises in its landline territory will have access to all-fiber facilities. Verizon too has announced an SDN-based strategy "to introduce new operational efficiencies and allow for the enablement of rapid and flexible service delivery to Verizon's customers." And CenturyLink has announced the launch of 1 Gbps broadband service to 16 cities. According to recent reports, CenturyLink's national fiber network upgrade has expanded availability of CenturyLink's gigabit broadband services to nearly 490,000 business locations. These are just a few of many examples in which industry is investing heavily to bring the benefits of new networks and services to customers of all sizes.

3. We recognize that the success of the technology transitions is dependent, among other things, on clear and certain direction from the Commission that preserves

the historic values that Congress has incorporated in the Communications Act of 1934, as amended (the Act). In the January 6, 2015 NPRM, 80 FR 450, we sought comment on limited oversight that would encourage transitions that could otherwise be delayed if a portion of consumers were left behind or competition were allowed to diminish — recognizing that the transitions that are underway are organic processes without a single starting or stopping point. Building on that NPRM, in this item we support the transitions by adopting limited and targeted regulation to preserve competition and to protect consumers, especially those in vulnerable populations who have not yet voluntarily migrated from plain old telephone service (POTS) and other legacy services. In taking these steps, we seek to avoid the need for future regulation and dispute resolution that could cause delays down the road. Carriers involved in the historic transitions have made clear their intention to protect consumers and preserve a competitive marketplace going forward, and the pro-transition rules we adopt today are consistent with those mutually shared goals.

4. Establishing Clear Standards to Streamline Transitions to an All-IP Environment. Having established that section 214's discontinuance provisions apply to a service based on a totality-of-the-circumstances functional evaluation, we believe it is prudent to provide additional guidance so that consumers and providers are clear on the meaning of the section 214 standard. Building on the record developed in response to the -NPRM, in this FNPRM we propose specific criteria for the Commission to use in evaluating applications to discontinue retail services pursuant to section 214 of the Act. We believe all stakeholders will benefit from an additional round of focused comment

on our specific proposals. As we stated previously, adopting specific criteria will enable the Commission to ensure that we can carry out our statutorily-mandated responsibilities in a technology-neutral manner and provide clear up-front guidance that will minimize complications when carriers seek approval for large-scale discontinuances. With clear standards in place, carriers will not have to guess as to how they can obtain approval to discontinue TDM services once they are ready to do so.

II. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Establishing Clear Standards to Streamline Transitions to an All-IP Environment

5. We seek comment on specific proposals for possible criteria against which to measure "what would constitute an adequate substitute for retail services that a carrier seeks to discontinue, reduce, or impair in connection with a technology transition (e.g., TDM to IP, wireline to wireless)." We sought comment on this topic in the Notice, asking wide-ranging questions, and believe that the specific proposals that we raise here will facilitate development of a sufficient record to allow us to fully establish highly effective, clear, and technology-neutral criteria. The Commission remains dedicated to providing carriers the guidance and clarity they need to implement new technologies at scale as quickly as possible. We will benefit from more targeted input in order to adopt rules that are carefully tailored to address the issues presented by the ongoing technology transitions process and that will stand the test of time.

6. Our purpose is to adopt clear criteria that will eliminate uncertainty that could potentially impede the industry from actuating a rapid and prompt transition to IP

and wireless technology. We recognize that our existing case-by-case approach may not provide sufficient guidance as to what constitutes an adequate substitute with regard to cutting-edge technology transitions, and we recognize that as a result carriers may be more inclined to pursue half-measures that merely "test the water." Such outcomes reduce innovation and are inconsistent with our overarching goal of advancing the public interest and ensuring "that we protect consumers, competition, and public safety."

7. The Commission always has applied certain criteria in evaluating the adequacy of alternative services in the context of section 214 discontinuance applications. The Commission has engaged in a highly fact-specific analysis based on the situation presented and has not codified any specific criteria by which it evaluates the adequacy of substitute services. The record we received in response to questions in the NPRM about adequate substitutes included a range of public interest organizations, state utility commissions, competitive LECs, telecommunications service consumers, and others advocating that we should define attributes of an adequate substitute, and other commenters, particularly larger incumbent LECs, urging us not to do so. Incumbent LECs believe that defining the attributes of an adequate substitute service would discourage carriers from innovating. A number of these commenters argue that the Commission should encourage the development of industry best practices.

8. Commenters have not swayed us from our belief that establishing criteria for evaluating the adequacy of replacement services will benefit industry and consumers alike by providing certainty. Indeed, we believe that by establishing and codifying such

criteria, we provide transparency and certainty in an area that has been subject to case-by-case evaluation without formal rule-based guidance. We believe that it is important to ensure that key aspects of service such as connection persistence and quality, 9-1-1 service, and service for individuals with disabilities remain available. We agree with Public Knowledge that establishing clear principles that ensure the availability of key functions post-transition will likely increase public acceptance of alternative technologies, thus decreasing resistance to services based on next-generation technologies.

9. We agree with incumbent LECs that the Commission must evaluate the availability of alternative services from sources other than the carrier seeking section 214 discontinuance authority. Moreover, there seems to be a misplaced belief that the Commission will automatically categorize any change in underlying technology or facility as a discontinuance, reduction, or impairment of service for which a carrier must seek Commission authorization under section 214. It is important to note that the Commission must evaluate the adequacy of those alternative services using the same criteria as those applied to any replacement service offered by the discontinuing carrier. We also reiterate that the availability of adequate substitute services is just one of five factors the Commission looks at in evaluating section 214 discontinuance applications under existing precedent, to be balanced against the other factors in determining whether the public convenience and necessity will be adversely affected by discontinuance of the service at issue. In evaluating an application for discontinuance authority under section 214(a), the Commission considers five factors that are intended

to balance the interests of the carrier seeking discontinuance authority and the affected user community: (1) The financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations. The reasonably comparable wholesale access interim rule that we adopt in the Order applies as a condition on certain grants of discontinuance authority, and as such it applies separately from and subsequent to this balancing test. We therefore believe that adoption of criteria by which to measure the adequacy of available substitute services, which we will look to as part of a larger evaluation of the circumstances surrounding a proposed discontinuance, will not serve to discourage carriers from seeking to innovate and develop new communications technologies.

1. Proposed Criteria

10. Consistent with the NPRM, we tentatively conclude that several of the criteria proposed by Public Knowledge, listed below, are the appropriate criteria for the Commission to consider in determining whether to authorize carriers to discontinue a legacy retail service in favor of a retail service based on a newer technology. These proposed criteria align the Commission's dual incentives of: (1) Meeting the statutory obligations to protect consumers, competition, and the public safety; and (2) resolving discontinuance applications as briskly as possible. As Public Knowledge et al. have noted, "[w]hen a new technology can be trusted to offer the same or better service than

what customers had before (at the same or better price), customers will have no reason to object to the transition." We find that having clear, established criteria is consistent with the Commission's obligations and also gives applicants the information they need to ultimately be more responsive to the Commission's concerns regarding adequate substitutes.

11. Specifically, we propose that a carrier seeking to discontinue an existing retail service in favor of a retail service based on a newer technology must demonstrate that any substitute service offered by the carrier or alternative services available from other providers in the affected service area meet the following criteria in order for the section 214 application to be eligible for an automatic grant pursuant to Section 63.71(d) of the Commission's rules: (1) Network capacity and reliability; (2) service quality; (3) device and service interoperability, including interoperability with vital third-party services (through existing or new devices); (4) service for individuals with disabilities, including compatibility with assistive technologies; (5) PSAP and 9-1-1 service; (6) cybersecurity; (7) service functionality; and (8) coverage. Certain commenters support the ten attributes proposed by Public Knowledge. One of those supporters suggests reworking and combining those criteria to focus on retail services, consistent with the Commission's stated emphasis in the NPRM, as follows: "(1) Reliable and accurate access to E911; (2) constant availability, including during storms and emergencies; (3) adequate call quality; (4) compatibility with health and safety services that use the network; (5) adequate data transmission capability; and (6) affordable to consumers." We seek detailed comment on these and other possible

criteria below. Although much of the discussion on the proposed criteria focuses on residential end users, we also recognize that the perspective of commercial stakeholders, including enterprise end users, is vitally important. We therefore seek comment from these stakeholders regarding how and to what extent the proposed criteria inform their decision-making process. Are their service concerns identical to those of residential consumers? If not, should different or additional service metrics be considered for their purposes?

12. As an initial matter, we seek comment on when any criteria that we adopt should apply. Should their application be dependent on the nature of the existing service and the newer service to which the carrier is transitioning? What should qualify as a "service based on a newer technology"? Rather than framing the draft rule in terms of discontinuance of an "existing" service in favor of a "service based on a newer technology," should we instead frame it in terms of discontinuance of "legacy service," and if so how should the term "legacy service" be defined? Should the criteria apply where the replacement service offered by the requesting carrier or the alternative services available from other providers in the relevant service area are IP-based or wireless? Should they apply where the replacement or alternative service is based on next-generation technologies? If so, how should we define next-generation technologies? For purposes of this FNPRM, we will simply refer to the relevant situations in which a carrier seeks to discontinue an existing retail service in favor of a next-generation service as "technology transitions," but we do not intend to suggest

that we have reached a conclusion on when any criteria that we have adopted will apply.

13. We further tentatively conclude that if a carrier certifies in its application that it satisfies all of these criteria, then the application will be eligible for automatic grant pursuant to section 63.71(d) of the Commission's rules as long as other already-adopted applicable requirements for automatic grant are satisfied. However, if the carrier discontinuing a service during a technology transition is unable to file such a certification, or if comments or objections call into question whether a substitute or alternative service satisfies all of the criteria we adopt, then we would not automatically grant the application. Instead, the carrier would be required to submit information demonstrating the degree to which it meets or does not meet each factor, and we would weigh this information in our evaluation of whether a replacement service offered by the applicant or an alternative service offered by another provider in the relevant service area qualifies as an adequate substitute for the existing service for which the carrier seeks discontinuance authorization. We propose that for applications not subject to automatic grant, the adequate substitute evaluation would retain its traditional role as a part of our multi-factor determination of whether to grant a discontinuance application. In other words, outside of the automatic grant context, we propose that we not alter the role that the existence, availability, and adequacy of alternatives plays in our analysis; rather, we propose to channel that analysis through the criteria that we will articulate. We seek comment on this proposed approach. We recognize that with respect to the question of whether automatic grant is available, this

proposal affords the adequate substitute factor a new primacy in the section 214 analysis. However, we anticipate that this approach is necessary to ensure consumer protection as technologies transition by providing the Commission sufficient time to evaluate applications that may not provide a completely adequate substitute. Further, this approach permits industry to pursue transitions flexibly because it does not mandate that all criteria must be met and continues to evaluate the adequacy of substitutes as merely one factor in the overall discontinuance analysis.

14. To the extent commenters believe a different approach is preferable, they should describe with specificity the alternative and address how it would adequately protect consumers while providing sufficient industry flexibility. To the extent commenters argue that not all of the criteria should be considered mandatory in order for an application to qualify for automatic granting, they should identify which factors would not be mandatory. If we remove an application from automatic grant, we propose weighing compliance with the criteria as a part of our overall multi-factor analysis of whether to approve a discontinuance application, and we seek comment on this proposal. Should we require that one replacement or alternative service satisfy every criterion we adopt in order to qualify for automatic grant, or is it sufficient that multiple alternative services are available which collectively satisfy all of the adopted criteria? We also seek comment on the costs and benefits of adopting a rule consistent with our tentative conclusion and on any other proposals suggested in the record. We seek comment on whether requiring this multi-factored showing from the carrier will promote or deter innovation or competition.

15. Where a carrier is seeking to establish the adequacy of alternative retail services in the context of a section 214 discontinuance application by certifying its compliance will all of the criteria such that its application may be eligible for automatic grant, we further tentatively conclude that the certification should be executed by an officer or other authorized representative of the company and be accompanied by a detailed statement explaining the basis for such certification. The certification would be subject to the requirements of section 1.16 of the Commission's rules and be subscribed to as true under penalty of perjury in substantially the form set forth in the rule. We seek comment on whether such an approach would be consistent with the objectives of the revised service discontinuance process, particularly in evaluating the adequacy of alternative services in the context of Section 214 discontinuance applications.

16. We tentatively conclude that in each case in which a carrier must demonstrate the existence of an adequate substitute service, the qualifying service can be a service the carrier offers, or can be an existing service offered by third parties. Under our proposal, references in this sub-section to "demonstrating" or otherwise showing that a criterion is met encompass demonstration via certification where the carrier is able to seek eligibility for automatic grant or, otherwise, demonstration via the submission of evidence and information. We also tentatively conclude that a showing as to a first-party or a third-party service will be treated equally, i.e., the criteria would not apply more stringently in one case than the other. We seek comment on these tentative conclusions and on possible alternatives. Would another approach be consistent with our precedent? Should a carrier be permitted to rely on one substitute

service as to some factors and a different substitute service as to other factors, or should it be required to show that there is one service that is a fully adequate substitute for the discontinued service?

17. We would prefer to adopt bright-line objective criteria that can be applied on a national basis instead of requiring localized testing of the service to be discontinued and/or the substitute service. We recognize that the criteria that we propose may not fully achieve this goal because of the lack of specific recommendations regarding objective metrics in the record. We further recognize that a localized testing-based approach may be incompatible with our proposal to allow parties to file a simple certification at the time of the application to allow potential automatic grant. We urge all interested parties to provide bright-line objective criteria to the maximum extent possible. For instance, what metrics or standards are incorporated into large commercial or governmental contracts regarding quality of service? However, we caution that we intend to adopt criteria and will adopt a localized testing-based regime if we deem it necessary in the absence of a workable national framework. We seek comment on the relative benefits of objective bright-line criteria and a localized testing approach in this context. If we do adopt a localized testing-based approach, how long a period of testing should we require for the discontinued and/or substitute service?

18. We also seek to further develop the record on whether the application of these criteria should be dependent on the nature of the legacy service and the newer service to which the carrier is transitioning, and specifically on what should qualify as a "newer" service. Should the criteria apply where the replacement service offered by the

requesting carrier or the alternative services available from other providers in the relevant service area involve fixed, mobile wireless, or fixed wireless technologies that provide VoIP or other IP-based services? Should they apply where the replacement or alternative service is based on next-generation services?

19. Network Capacity and Reliability. Networks must have sufficient capacity to meet end user needs. Moreover, reliability has long been a hallmark of this country's communications network. During peak traffic periods, capacity is necessary to ensure reliability; without reliability, capacity is of limited use. Consistent with common usage, we use the term "reliability" to describe how often a service is available for the consumer. However, we recognize that technically what we are discussing is "availability" of a service, which is defined by the International Telecommunication Union (ITU) as follows: "Availability of an item to be in a state to perform a required function at a given instant of time or at any instant of time within a given time interval, assuming that the external resources, if required, are provided." Public Knowledge proposed that we evaluate availability separately from reliability, but because much of its proposal focused on service during power outages (which is being addressed by the Commission through separate means and because the reliability test that we propose based on its submission also addresses "availability" within its technical meaning, we do not propose a separate availability factor. Within a given time interval, assuming that the external resources, if required, are provided." We therefore tentatively conclude that any adequate substitute test that we adopt should evaluate whether the replacement or alternative service

> will (a) afford the same or greater capacity as the existing service and (b) afford the same reliability as the existing service even when large numbers of communications, including but not limited to calls or other end-user initiated uses, take place simultaneously, and when large numbers of connections are initiated in or terminated at a communications hub, including but not limited to a wire center. This means that:
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> 1) Communications are routed to the correct location
> 2) Connections are completed
> 3) Connection quality does not deteriorate under stress
> 4) Connection setup does not exhibit noticeable latency.

20. We seek comment on this tentative conclusion. Should network capacity and reliability be a part of our adequate substitute evaluation? For purposes of implementing the Connect America Fund Phase II model-based support to price cap carriers, the Wireline Competition Bureau adopted a 100 millisecond latency metric to judge whether a service offering meets the Commission's requirement that service enable the use of real time applications. The Wireline Competition Bureau selected the 100 millisecond standard based on the International Telecommunication Union (ITU)

standards. We seek comment on whether to adopt that same metric to judge whether "noticeable latency" occurs here and seek comment on that proposal. In addition, we propose to adopt metrics for jitter, packet loss, and through-put to provide a more complete and robust performance measurement of the service being offered to evaluate successful routing, completion of connections, and quality deterioration and ask commenters to address what specific thresholds should be adopted. The term "jitter" is used herein to refer to encompass IPDV (IP Packet Delay Variation) or PDV (Packet Delay Variation) as those terms are defined by ITU and Internet Engineering Task Force (IETF) documents. The term "packet loss" used herein to encompass IPLR (IP packet Loss Ratio) as that term is defined by ITU and IETF documents. We also propose that the required metrics be based on the defined standards for various classes of service in ITU-T Y.1541, adjusted for the portion of the network that is the responsibility of the provider. We do not propose to include separate network capacity indicators as part of the adequate substitute test because measuring latency, jitter, packet loss, and speed through-put performance testing during network peak periods can demonstrate whether there is sufficient network capacity and quality. We ask how reliability (availability) can be measured by "reachability" tests conducted on a continuous basis. Such measures could include ping or other User Datagram Protocol (UDP)-based tests, such as the FCC Measuring Broadband America program. Other methodologies could also be employed, such as requiring an upper limit over-subscription ratio at defined points in the network, dual homing to at least two different upstream providers, multiple links to a single upstream provider, and a utilization limit above which

additional ports and links would be required. We seek comment on this proposed approach and possible alternatives. CWA suggests that in the context of voice communications, "the ability to access a dial tone within three seconds 98% of the time during the busy season - busy hour should be the minimally acceptable level of service for a network," basing this suggestion on "the same, or substantially similar" standards maintained by 18 state public utility commissions. We seek comment on whether we should adopt this standard as a part of our evaluation and on whether and how it can apply to non-dial tone services. Should we evaluate availability separately from reliability, and if so how should we evaluate each?

21. Service Quality. As one commenter noted, "[c]onsumers expect their voice communications to be clear, understandable, and free of distortion." We believe that this is a reasonable expectation that should not fall by the wayside when a carrier transitions its facilities from the traditional public switched telephone network to use of different technologies, and we do not believe that it should be limited to the quality of voice calls. We therefore tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates in its section 214 application that any replacement or alternative service meets the minimum service quality standards set by the state commission responsible for the relevant service area. We seek comment on this proposal. If the relevant state commission has not established such standards or lacks authority to do so, then we seek comment on what standards we should apply. In the Connect America Fund docket, parties have urged the Commission to adopt alternative measures of service quality for recipients of Connect

America Fund support, such as requiring voice service to be provided with an "R Factor" score at or above a minimum threshold value. We note, however, that the R score is a network planning tool and is not designed to measure actual service quality. R scores "are only made for transmission planning purposes and not for actual customer opinion prediction (for which there is no agreed-upon model recommended by the ITU-T)." For data services, should internal network management system (NMS) tools be used to measure speed performance? Are external systems preferable, such as the Measuring Broadband America-based hardware approach? The Measuring Broadband America program is an ongoing nationwide study by the FCC of U.S. consumer broadband performance. The program's hardware approach involves connecting a measuring device to a broadband user's work station and periodically running speed tests to remote targets on the Internet. Are there additional performance metrics that should be considered? We also seek comment on TelePacific's suggestion that "[a]dditional metrics could include repeat trouble/repair reports, a key metric to determine whether incumbent LECs are fixing their plant, or compliance with [certain] Telcordia Standards . . . ." As an alternative to the approach we propose, can "network capacity and reliability" and "service quality" be measured by the same performance metrics (e.g., delay, jitter, packet loss, through-put, and availability) such that adopting them as distinct criteria is neither necessary nor desirable?

22. Device and Service Interoperability. We tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates that its replacement service or the alternative services available from

other providers in the relevant service area allow for as much or more interoperability of both voice and non-voice devices, or newer technology-based equivalent devices, as the service to be retired. We seek comment on this tentative conclusion, as well as possible alternatives. To the extent commenters oppose adoption of such a requirement, they should identify with specificity their reasons and explain how we still can ensure that consumers are not harmed by the proposed discontinuance.

23. Certain commenters profess to be confused about what functionalities consumers consider to be essential components of their legacy service. However, the record is already replete with examples of such devices and services. Indeed, AT&T acknowledged in its Proposal for Wire Center Trials that a variety of such third-party devices and services are "vitally important to its customers." And consumer response to Verizon's attempts to use its VoiceLink service as a replacement service for its damaged wireline service in the wake of Super Storm Sandy can leave no doubt regarding what consumers believe to be essential service features. Moreover, the CTC Report contains a discussion regarding the use of various technology standards to allow for ongoing interoperability. According to CTC Technology and Energy (CTC): "Despite this diversity, the majority of non-voice devices conform to a standard modem technology, such as v.32, v. 34, v.42bis, v.44, v.90, and v.92. Even where a truly proprietary device is used, the signaling and communications and protocol is similar enough to a standard modem that a test of a range of standards should be close enough to determine whether many devices will work on an IP-transitioned line." CTC also notes that while older dial-up modems and fax machines fail to transmit properly over VoIP devices, this problem can

be mitigated: "Technology complying with the ITU T.38 standard can mitigate this issue by allowing the VoIP ATA [analog telephone adapter] to decode or 'read the fax or modem signal, transmit the contents to the VoIP device at the far end as IP packets, and re-encode it for the fax or modem at the receiving location."

24. How should we measure the level of interoperability? Should we require that the service conform to standard modem technology and, if so, how should we define that phrase for purposes of this criteria? Should we require that any VoIP device used by the network comply with the ITU T.38 standard, as proposed by CTC, or to some other standard? To what extent should we consider consumer trends in evaluating what third-party devices or services a substitute or alternative service should be required to support? Are there other ways in which to ensure the interoperability of third-party devices and services? ADT proposes that we adopt a rule governing the adoption of Managed Facilities-Based Voice Network (MFVN) standards, which it asserts have been used to ensure the continued interoperability of alarm monitoring systems during and after the transition to IP networks. We seek comment on whether the MFVN standards should play a role in our evaluation of the interoperability criteria or, in the alternative, on what role if any it should play in our legal framework for technology transitions. Lastly, we tentatively conclude that functionalities "in development" for a replacement service at the time a carrier submits a section 214(a) discontinuance application will not be considered in evaluating the adequacy of the replacement service. We seek comment on this tentative conclusion.

25. Service for Individuals with Disabilities. The importance of ensuring that consumers with disabilities can utilize assistive technologies over communications networks is indisputable. There are several possible areas of impact of the transition on people with disabilities, such as (1) degradation of voice service quality that may compromise the ability of users who are hard of hearing to engage in a telephone conversation, and (2) incompatibility of remote transmission technologies over IP-based networks used for the provision of captioning on television or Internet-based video programming. As we noted above, one purpose of adopting criteria for evaluating the adequacy of substitute services is to ensure consumer protection. We tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates that its replacement service or the alternative services available from other providers allow at least the same accessibility, usability, and compatibility with assistive technologies as the service being discontinued. We seek comment on this tentative conclusion, as well as possible alternatives. To the extent that people with disabilities must transition to new equipment, we seek comment on what is needed to reduce the burden of obtaining such equipment, particularly for those who do not qualify for existing state and federal equipment distribution programs and for those who are replacing devices not covered by equipment distribution programs (such as individuals with medical devices that are incompatible with IP service). Should we require carriers seeking to discontinue existing services in such contexts to include in their Section 214 applications information regarding the availability of IP-enabled devices that can also be distributed to selected and qualifying recipients under

applicable state and federal programs? One commenter noted its "understanding that technology transitions can be made to properly function with legacy assistive technology devices (e.g., TTY terminals) through appropriate network software modifications, and/or through the general availability of IP-enabled devices that can also be distributed to selected and qualifying recipients under applicable state and federal programs." Is this correct?

26. We note that as TDM networks are discontinued in favor of IP-based networks, there is an opportunity to implement IP-based real time text to replace TTY text services, as the key functionalities of both services are similar. We seek comment on whether we should require the implementation of real time text over IP networks and whether we should set an end date for the termination of TTY text services. We also seek comment on the appropriate length of a transition period during which both TTY text services and IP-based real time text would be available. We ask commenters to describe what IP-based real time text service would look like, including applicable standards, and to explain how it will be implemented. In response to the -NPRM, some commenters assert that accessibility is currently the subject of an industry-wide proceeding and thus should not be addressed "ad hoc" in this proceeding. We tentatively conclude, however, that we should adopt a standard regarding compatibility with assistive technologies for purposes of evaluating discontinuance applications. We seek comment on this tentative conclusion. We also seek comment on the appropriate timelines for issuing notices that existing services will be discontinued, and that new services may not be compatible with certain equipment. We further seek comment on

the means of issuing such notices to ensure effective communication to the full community of people with disabilities.

27. Although we acknowledge the possible impact that the transition to IP networks may have on people with disabilities, we also recognize an opportunity to implement high definition voice (HD voice) service over IP networks. HD voice would be especially beneficial for particular consumers who are hard of hearing to be able to better understand conversations over the telephone, thereby improving accessibility of the network to such consumers and potentially reducing their reliance on intermediary relay services such as captioned telephone service (CTS) and IP captioned telephone service (IP CTS) in favor of mainstream forms of communication. We therefore propose to require providers of IP networks to include HD voice as a feature for users with disabilities and seek comment on our proposal. We ask commenters to discuss timetables for the implementation of HD voice. Lastly, although speech recognition technologies that can accurately convert speech to text are still under development, we seek comment on the state of development of such technologies, which can also assist in the development of an all-inclusive network that will allow users to migrate away from the use of CTS and IP CTS in favor of mainstream forms of communication. In particular, we ask commenters to address the technical barriers to the development of accuracy for such technologies and the length of time that it is expected to take.

28. PSAP and 9-1-1 Service. The ability of consumers to contact 9-1-1 and reach the appropriate Public Safety Answering Point (PSAP) and for that PSAP to receive accurate location information for the caller is of the utmost importance. We therefore

tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates that a substitute service offered by the requesting carrier or alternative services available from other providers in the relevant service area complies with applicable state, Tribal, and federal regulations regarding the availability, reliability, and required functionality of 9-1-1 service. We seek comment on this tentative conclusion as well as any possible alternatives. Specifically, should we base our evaluation on whether substitute services merely comply with any 9-1-1 regulations applicable to such services, or whether they provide as good – or better – 9-1-1 functionality as the service(s) they replace? For example, would a fixed wireless service that complies with wireless 9-1-1 automatic location information (ALI) requirements be an adequate substitute for a traditional landline service that provides ALI to PSAPs at the street-address level, or would such a substitution be inadequate? Would a VoIP service that will not function during a loss of commercial power, or that provides only a limited amount of battery backup for CPE, serve as an adequate substitute to reach 9-1-1 in an emergency? What other factors should we consider for residential services? Further, what considerations should be applied to discontinuance of 9-1-1 network services and components, such as trunks and selective routers, that support the capability of individual consumers to effectively reach 9-1-1? We observe that, without ensuring adequate service to PSAPs, residential 9-1-1 service could be negatively affected.

29. Certain commenters expressed concern that questions regarding 9-1-1 service are being addressed in other proceedings and thus should not be addressed

here. We note, however, that our 2014 Policy Statement and Notice of Proposed Rulemaking on 9-1-1 governance and accountability proposed only that "covered 911 service providers that seek to discontinue, reduce, or impair existing 911 service in a way that does not trigger already existing authorization requirements should be required to obtain Commission approval." The Commission further stated that "[w]e do not . . . intend to create duplicative obligations for entities that are already subject to section 214(a) and associated authorization requirements" and that any new requirement for covered 9-1-1 service providers "would apply only when entities seeking to discontinue, reduce, or impair existing 911 service are not already required to obtain approval under other existing Commission rules." Accordingly, we disagree that our proposal here to consider access to 9-1-1 as a criterion in our section 214 analysis would duplicate or conflict with additional measures proposed in other proceedings. Although the issues are related and reflect our overarching goal of ensuring that all Americans have reliable access to 9-1-1, we tentatively conclude that the issues raised here with respect to adequate substitution are separate from those under consideration in the 9-1-1 governance proceeding and should therefore proceed independently. We seek comment on this tentative conclusion.

30. Communications Security. In the -NPRM, the Commission observed that IP technologies "can create the potential for network security risks through the exposure of network monitoring and control systems to end users." We sought comment "on whether the Commission should require demonstration, as part of the section 214 discontinuance process, that any IP-supported networks or network

components offer comparable communications security, integrity, and reliability." Several commenters expressed support for our considering network security as part of this process. We now tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates in its application that a substitute service offered by the requesting carrier or alternative services available from other providers in the relevant service area offer comparably effective protection from network security risks. We believe that this approach would adequately protect the interests of consumers, while preserving flexibility for providers to tailor security risk management practices to their unique needs and circumstances. We seek comment on this tentative conclusion, as well as possible alternatives. What factors should we consider in assessing whether a substitute service offers comparably effective protection from network security risks? How should we define the appropriate category of "network security risks" for this purpose? Should we consider factors such as those Public Knowledge identifies in its comments? For instance, should we consider the extent to which a proposed substitute service exposes users to a higher risk of spoofed calls or "man-in-the-middle" attacks (e.g., interception of fixed wireless calls using an "IMSI catcher") that compromise a user's ability to communicate or put personal information at risk? An "IMSI catcher" is an eavesdropping device, essentially a fake mobile tower that intercepts cellphone calls and can be used to listen to the cellphone owner's calls, read their texts, and track their movements. Should we consider the vulnerability of a proposed substitute service to physical risks (e.g., weather damage) or human risks (e.g., insider threats)?

31. Would it be sufficient for an applicant to demonstrate that the provider of the substitute service has engaged in implementation of the National Institute for Standards and Technology (NIST) Cybersecurity Framework (NSF) or an equivalent risk management construct? Should an applicant also address the provider's participation in the Communications Sector Coordinating Council or other public-private initiatives to promote more secure communications networks? Should an applicant provide more detailed information regarding the provider's cyber risk management practices in general, its implementation of relevant industry best practices, or its engagement with fellow providers to address shared risks? To what extent may the Commission reasonably expect that applicants to discontinue service are in a position to provide information about the network security risks of an unaffiliated provider of a substitute service? Should the degree of detail required from an applicant depend on whether the provider of a proposed substitute service is affiliated with the applicant? What additional information, if any, would assist the Commission in evaluating the security protections afforded by a proposed substitute service?

32. Service Functionality. Consumers have come to expect that they may use their phone service to make calls anywhere to anyone, regardless of the network used by the call recipient. This is not always the case with other types of voice service. They also have come to expect that their phone service provides certain functionalities, such as caller ID, transport of touch tones, and the ability to make calling card, dial-around, collect, or third-party number billed calls, as well as certain non-call functionalities. Enterprise customers also rely on the functionalities available from the services they

purchase. We tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier must demonstrate in its Section 214 application that any replacement offered by the requesting carrier or alternative service available from other providers in the relevant service area permit similar service functionalities as the service for which the carrier seeks discontinuance authority. We seek comment on this tentative conclusion, as well as other possible alternatives. We seek comment as well on whether similar functionalities as those provided by legacy services, such as medical alert monitors and credit card processing, are feasible with new technologies and whether new end-user equipment would be required.

33. How should "service functionality" be defined? We recognize that we need additional information on this issue. How can we ensure that it will be a technology neutral evaluation? Should we require that if, for instance, a voice service with caller ID is discontinued, a replacement service or alternative service offered by another provider in the relevant service area must include the option of caller ID? Or if facsimile machines can be used over the existing service, a replacement or other alternative service must afford similar interoperability? Or if a data service is to be discontinued, such capability, or something that performs the same function, must be otherwise available? How do we measure the scope of "service functionality"? How can carriers gather the information needed regarding functionalities consumers consider to be essential components of their service? How can they gather "service availability" information with respect to alternative services offered by other providers in the relevant service area? And how does this proposed criterion correlate to our

statement in the Declaratory Ruling that the relevant task in defining the scope of a carrier's service "is to identify the service the carrier actually provides to end users" and that "[i]n doing so, the Commission takes a functional approach that evaluates the totality of the circumstances"?

34. Coverage. Inherent in our longstanding evaluation of the existence, availability, and adequacy of alternative services is the question of whether the substitute service is available to the persons to whom the discontinued service has been available. Our evaluation of the nature of the substitute service is for naught if the service simply is not available to the affected customers. We therefore tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates in its application that the substitute service will remain available in the affected service area to the persons to whom the discontinued service had been available. We seek comment on this tentative conclusion. Should we adopt a de minimis threshold by percentage of prior population or geographic area reached for which loss of coverage is tolerable?

35. Public Knowledge suggests that we focus specifically on wireline coverage when evaluating the adequacy of the substitute service. We recognize that as illustrated by consumer response to Verizon's attempt to replace the wireline network destroyed by Super Storm Sandy with its wireless VoiceLink service, a significant portion of consumers view coverage equivalent to that traditionally found in wireline telephony as essential. And commenters noted the importance of the availability of wireline coverage to rural consumers, for whom there tend to be fewer available options.

Should we look differently at technologies that offer the level of coverage traditionally afforded by wireline telephony from those that do not, and if so how?

2. Consumer Education

36. As discussed in the Order above, we remain concerned about the level of consumer education and outreach around technology transitions generally. A discontinuance of an existing service on which customers presently rely creates an especially great need for customer education. It was for that reason that the January 2014 Technology Transitions Order, the Commission set forth an expectation that providers conducting any experiment would "engage in customer outreach and education efforts." Accordingly, we propose to require that part of the evaluation of a section 214 application to discontinue a legacy retail service should include whether the carrier has an adequate customer education and outreach plan. We seek comment on this proposal, and also on whether there are particular metrics and guidance the Commission can and should provide concerning what would constitute an adequate education and outreach plan. We also seek comment on how best to work with the state commissions and Tribal governments on such education and outreach plans.

3. Other Issues

37. Other Criteria. Based on the record received to date, we tentatively conclude that we should not adopt the following proposals by commenters to include the following criteria in the section 214 process: (1) Operability during emergencies, including power outages, because this issue is being addressed by the Commission through separate means; (2) adequate transmission capability, because end users and

carriers should be free to reach agreement on services at a wide range of transmission capacities; (3) affordability, because the evaluation process in this context should focus on the nature of the service and because cost is not part of the equation in determining whether an available alternative service constitutes an adequate substitute for the service sought to be discontinued; and (4) connection persistence, because the Commission today takes other action to address that issue. We recognize the concerns about the often increased costs associated with a transition from a TDM-based service to an IP-based service. And we take such concerns into account when evaluating section 214 applications for discontinuance authority. We seek comment on these tentative conclusions. Could any of these criteria be reformulated in such a way that would warrant adoption? Should we adopt any other criteria not listed above?

38. Rural LEC Exemption. If we determine that it is appropriate to adopt any or all of the proposed criteria, should we include an exemption for some or all of them for rural LECs, as proposed by TCA? If so, should that exemption apply to all criteria? Or should the exemption apply to only certain criteria and, if so, which ones? And what criteria would a carrier have to meet to qualify for such an exemption? Would it be appropriate to apply it to LECs with fewer than two percent of the Nation's subscriber lines in the aggregate nationwide? Would some other measure be appropriate? We note that certain commenters assert that rural LECs should be exempt from any criteria for evaluating substitute services because of the often very limited options available in rural locales. Other commenters are concerned about any such exemption given the relative scarcity of alternatives available in many rural areas.

39. Market Power Analysis. NASUCA proposes that, when determining the adequacy of substitutes, it would be appropriate to use the "traditional antitrust formula for determining substitutability, used in the Qwest Phoenix Forbearance Order." In the Qwest Phoenix Forbearance Order, the Commission evaluated Qwest's petition for forbearance using a market power analysis that is similar to that used by the Commission in many prior proceedings and by the Federal Trade Commission and the Department of Justice in antitrust reviews. Under this approach, the Commission "separately evaluate[d] competition for distinct services, for example differentiating among the various retail services purchased by residential and small, medium, and large business customers, and the various wholesale services purchased by other carriers." The Commission also considered "how competition varie[d] within localized areas in the [relevant market]." To what extent would this market power analysis help inform an evaluation of whether adequate substitutes exist? What specific parts of the market power analysis would be beneficial when determining whether adequate substitutes exist?

B. Section 214(a) Discontinuance Process

40. In the -NPRM, the Commission sought comment on whether it should revise section 63.71 of its rules, which establishes the procedures that carriers must follow to obtain section 214(a) approval for discontinuances, including notification to affected customers. We noted our effort to strike the right balance between providing carriers the ability to schedule TDM discontinuance as part of their transition plans, and the need for carrier-customers to plan for the transition as well as prepare their end

user customers for possible changes to offerings that depend on the discontinuing carrier's last-mile inputs. We received some comment in response to the NPRM regarding what parties believe is a sufficient notice period. In response to the NPRM, XO and Birch et al. recommend requiring that carriers provide advance notice of discontinuance before filing an application with the Commission, while the Competitive Carriers Association recommends a longer discontinuance process. AT&T alternatively argues that any expanded notice is not necessary because the Commission has the option to remove a section 214 application from streamlined processing.

41. We find we need a more complete record on this issue before determining whether to adopt any additional modifications to Section 63.71 of our rules. Accordingly, we seek further comment on whether we should update Section 63.71, including the costs and benefits of any changes. Section 63.71(b) states that a carrier shall file its 214 application "on or after the date on which notice has been given to all affected customers." Section 63.71(d) provides that applications shall be automatically granted on the 31st day after filing an application for non-dominant carriers and the 60th day for dominant carriers, unless the Commission notifies the applicant that the grant will not be automatically effective. Should we update the earliest date by which the Commission may grant approval, either for dominant or non-dominant carriers or for both? We emphasize we wish to maintain a streamlined process for carriers that satisfy our existing criteria for such treatment and the adequate substitutes proposal discussed above if adopted. Should we require advance notice of discontinuance or are the existing procedures in section 63.71 sufficient? As noted

above, parties recommend various revisions to the notice for discontinuance of TDM-based services used as wholesale inputs. While we seek comment on those proposals, we also seek comment on whether to align timing for notices of discontinuance with notices of copper retirement. In the Order, we extend the notice of copper retirement to interconnecting carriers and non-residential retail customers to at least 180 days and the notice period to residential retail customers to at least 90 days based upon our conclusion that these time periods strike the right balance between the planning needs of competitive carriers and customers and the need for incumbent LECs to be able to move forward in a timely fashion with their business plans. We seek comment on whether this same rationale applies for discontinuances of TDM-based service to carrier-customers that may need to modify their end-user contracts to accommodate the discontinuance. We also seek comment on whether modification of section 63.71 to extend notice would conflict with any other Commission rules and procedures.

42. We also seek comment on whether we should revise our rules to explicitly allow email-based notice or other forms of electronic or other notice of discontinuance to customers. We recognize that email may be the preferred method of notice for both the carriers seeking discontinuance and consumers. We seek comment as to whether there are efficiencies of electronic distribution such that we should make a rule change to include it as a method of delivery. Would email or other electronic forms of notice harm or disadvantage any end users? Should alternative forms of notice be permissible only with customer consent, and if so what should be permissible methods to obtain consent? Are there factors the Commission should take into

consideration for certain groups of customers, such as accessible formats? Are there any other issues we should consider to ensure all affected consumers receive adequate notice? For example, how should notice be provided when consumers lack access to broadband?

C. Section 214(a) Discontinuance Notice to Tribal Governments

43. In the Order above, we extend notice of copper retirements to include notice to the public utility commission and the governor of the state in which the retirement will occur and to the Secretary of Defense, consistent with our current section 214 discontinuance rules. We also extend notice of copper retirements to affected Tribal governments so they may prepare for network changes affecting their communities. Here, we tentatively conclude that the same justification applies in the section 214 context of a discontinuance, reduction or impairment of a service. Tribal governments should be in a position to prepare and address any concerns from consumers in their Tribal communities. We also tentatively conclude that it is appropriate to make the notice requirements for section 214 discontinuance applications and copper retirement network changes consistent, as both involve changes to the Nation's communications networks and affect different groups of consumers. We therefore seek comment on including notice to Tribal governments as part of our section 214 discontinuance application process. Specifically, we seek comment on our tentative conclusion that we should revise rule 63.71(a) to include notice to Tribal governments in order to make our copper retirement and service discontinuance notice requirements consistent. Rule 63.71 requires that applications to

discontinue, reduce or impair service to a community provide notice to the "Governor of the State in which the discontinuance, reduction, or impairment of service is proposed, and also to the Secretary of Defense." We tentatively conclude that we should include any Tribal Nations in the state in which discontinuance, reduction, or impairment of service is proposed regardless of the reason for the discontinuance. To be clear, the proposed notice requirement would be permanent (barring future Commission action) and would not terminate with the reasonably comparable wholesale access condition at the conclusion of the Commission's special access proceeding. We seek comment on this proposal, including its costs and benefits. We seek comment on whether a different or limited scope of notice to Tribal governments would be appropriate. We seek comment on our proposal and if there are any legal, regulatory or procedural impairments to our extension of notice to Tribal governments. Are there any other issues of notice, such as form or content that are unique to Tribal governments the Commission should consider?

D. Copper Retirement Process – Good Faith Communication Requirement

44. In the Order above, we eliminate the objection procedures previously available to interconnecting carriers upon receipt of a copper retirement notice and instead adopt a requirement that incumbent LECs work with interconnecting entities in good faith to ensure that those entities have the information needed to allow them to accommodate the transition with no disruption of service to their end user customers. Should we provide specific objective criteria by which to evaluate this good faith requirement to ensure that all parties are aware of their respective rights and

obligations? And what recourse should be available to an interconnecting entity who believes that an incumbent LEC is not acting in good faith? If the Commission finds an incumbent LEC has failed to fulfill the good faith communication requirement, should the retirement be postponed by an additional 90 days (beyond the 180-day mark)? Are there limitations on how much and what types of information an incumbent LEC should be required to provide to an interconnecting entity?

E. Termination of Interim Reasonably Comparable Wholesale Access Condition

45. As discussed above, to support the current technology transitions, we seek to avoid delays due to diminished competition by imposing light-handed regulation through the interim reasonably comparable wholesale access condition. The Commission will have adopted and implemented the rules and policies that end the reasonably comparable wholesale access interim rule when: (1) It identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable; (2) it provides notice such rules are effective in the Federal Register; and (3) such rules and/or policies become effective. We recognize, however, that the special access proceeding will not address the status of commercial wholesale platform services such as AT&T's Local Service Complete and Verizon's Wholesale Advantage that include incumbent LEC loops, transport and local circuit switching.

46. We accordingly seek comment on how to facilitate continuation of commercial wholesale platform services, which we believe serve an important business

need for enterprises that seek, among other things, "the ability to obtain service from a single supplier at their disparate retail locations nationwide." Granite explains that it and other similarly-situated competitive carriers "serve multi-location business customers that have modest demands for voice services at each location by combining value-added services with underlying TDM-based telephone services purchased at wholesale from incumbent LECs." Granite recently submitted a study prepared by Charles River Associates that finds, based on Granite's own estimate of the per-line added value that its service provides to customers, that loss of wholesale access to incumbents' voice services would result in customer harm of between $4.443 and 10.168 billion per year. We note that this study is additionally premised on the expectation that absent regulatory action by the Commission, wholesale arrangements between companies like Granite and incumbent providers will not occur. We seek comment on that underlying assumption and on the incentives of incumbents to enter into, or not enter into, IP-based wholesale arrangements for voice service. We recognize that incumbents are currently offering such commercial arrangements in TDM on a voluntary basis and we encourage such arrangements and hope they continue to be standard wholesale offerings, including in IP. Verizon, for example, points out that "[c]ommercial UNE-P replacement products are market-based responses to competitive pressures, and in the six wire centers that Verizon migrated to all-fiber facilities, Verizon provided Wholesale Advantage – [Verizon's] UNE-P commercial replacement product – onto the new fiber facilities with no change in rates, terms, or conditions." We further recognize the benefits of agreements reached through market negotiations.

47. However, to the extent that the Commission finds that wholesale arrangements for voice service are unlikely to occur in the future on a marketplace basis, would it be appropriate for the Commission to require reasonably comparable wholesale access for commercial wholesale platform services for a further interim period beyond completion of the special access proceeding? If the Commission does extend this requirement, for how long should it be extended and should its substance be revised? Should the timeframe be connected to any pending Commission proceeding?

III. PROCEDURAL MATTERS

A. Ex Parte Presentations

48. This proceeding shall continue to be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda,

or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Filing Instructions

49. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Because more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or

overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

C. Paperwork Reduction Act Analysis

50. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Initial Regulatory Flexibility Analysis

51. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the FNPRM contained herein. The analysis is found below. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the FNPRM and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Proposed Rules

52. Building on the record developed in response to the NPRM, in the FNPRM the Commission proposes specific criteria for the Commission to use in evaluating the adequacy of substitute services in connection with applications to discontinue retail services pursuant to section 214 of the Communications Act of 1934, as amended. The Commission believes all stakeholders will benefit from an additional round of comments focused on its specific proposals. Adopting specific criteria will enable the Commission to ensure that it can carry out its statutorily-mandated responsibilities in a technology-neutral manner and provide clear up-front guidance that will minimize complications when carriers seek approval for large-scale discontinuances. The Commission also seeks further comment on what constitutes a sufficient notice period for affected customers in connection with a section 214 discontinuance application and whether it should revise its rules to explicitly allow email-based notice or other forms of electronic or other notice of discontinuance to customers. And the Commission seeks comment on including notice to Tribal governments as part of the section 214 discontinuance application process. The Commission also seeks comment on defining what constitutes "good faith" in connection with the requirement adopted in the Order that incumbent LECs act in good faith to provide interconnecting entities with information needed in order to accommodate planned copper retirements. Finally, the Commission seeks comment on how to facilitate continuation of commercial wholesale platform services after technology transitions.

53. First, the FNPRM seeks additional comment on possible criteria against which to measure "what would constitute an adequate substitute for retail services that a carrier seeks to discontinue, reduce, or impair in connection with a technology transition (e.g., TDM to IP, wireline to wireless)" in order "to ensure that we protect consumers, competition, and public safety." The Commission continues to believe that establishing criteria for evaluating the adequacy of replacement services will benefit industry and consumers by providing certainty. Because the record as developed thus far does not provide sufficient clarity to allow the Commission to fully establish clear criteria, the Commission seeks additional comment on specific proposals so that it has the benefit of more targeted input in order to adopt rules that are carefully tailored to address the issues presented by the ongoing technology transitions process and that will stand the test of time. The FNPRM also seeks comment on effective ways to ensure compliance with the criteria and tentatively proposes requiring an officer or other authorized public representative to certify the accuracy of the statements in the application regarding the criteria. The availability of adequate substitute services is one of five factors the Commission looks at in evaluating section 214 discontinuance applications under existing precedent, to be balanced against the other factors in determining whether the public convenience and necessity will be adversely affected by discontinuance of the service at issue.

54. Second, the FNPRM seeks additional comment on whether and how the Commission should adopt modifications to Section 63.71 of our rules, including the costs and benefits of any changes. In the NPRM, the Commission sought comment on

whether it should revise section 63.71 of its rules, which establishes the procedures that carriers must follow to obtain section 214(a) approval for discontinuances, including notification to affected customers and the earliest dates by the Commission may grant approval of discontinuance applications. Although some entities filed comments, in the FNPRM the Commission determines that we need a more complete record on this issue. The FNPRM also seeks more general comment on whether it should revise its rules to explicitly allow email-based notice or other forms of electronic or other notice of discontinuance to customers and on whether there are factors the Commission should take into consideration for certain groups of customers, such as accessibility formats, or any other issues that the Commission should consider to ensure that all affected consumers receive adequate notice.

55. Third, the FNPRM tentatively concludes that the Commission should extend the notice requirements for discontinuances, reductions, or impairments of service to affected Tribal governments and seeks comment on including notice to Tribal governments as part of our section 214 discontinuance application process. Specifically, the FNPRM seeks comment on the tentative conclusion that the Commission should revise section 63.71(a) of its rules to include notice to Tribal governments in order to make its copper retirement and service discontinuance notice requirements consistent. The FNPRM tentatively concludes that the Commission should include any Tribal Nations in the state in which discontinuance, reduction, or impairment of service is proposed regardless of the reason for the discontinuance, and seeks comment on this, including its costs and benefits. Finally, the FNPRM seeks comment on whether a

different or limited scope of notice to Tribal governments would be appropriate and whether there are any other issues of notice, such as form or content, unique to Tribal governments that the Commission should consider.

56. Fourth, the FNPRM notes that, in the attached Report and Order, the Commission eliminates the objection procedures previously available to interconnecting carriers upon receipt of a copper retirement notice and instead adopts a requirement that incumbent LECs work with interconnecting entities in good faith to ensure that those entities have the information needed to allow them to accommodate the transition with no disruption of service to their end user customers. The FNPRM seeks comment on whether the Commission should provide specific objective criteria by which to evaluate this good faith requirement to ensure that all parties are aware of their respective rights and obligations. The FNPRM also seeks comment on what recourse should be available to an interconnecting entity who believes that an incumbent LEC is not acting in good faith and whether there are limitations on how much and what types of information an incumbent LEC should be required to provide to an interconnecting entity.

57. Finally, the FNPRM notes that to support the current technology transitions, we seek to avoid delays due to diminished competition by imposing light-handed regulation through the interim reasonably comparable wholesale access condition. The FNPRM seeks comment on how to facilitate continuation of commercial wholesale platform services, which the Commission believes serve an important business need for enterprises that seek, among other things, "the ability to obtain

service from a single supplier at their disparate retail locations nationwide." The Commission seeks comment on whether to the extent that the Commission finds that wholesale arrangements for voice service are unlikely to occur in the future on a marketplace basis, it would be appropriate for the Commission to require reasonably comparable wholesale access for commercial wholesale platform services for a further interim period beyond completion of the special access proceeding and, if so, for how long.

B. Legal Basis

58. The proposed action is authorized under Sections 1, 2, 4(i), 214, and 251 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 152, 154(i), 214, and 251.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

59. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A "small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

60. The majority of our proposals in the FNPRM will affect obligations on incumbent LECs. Other entities, however, that choose to object to network change

notification for copper retirement under our new proposed rules may be economically impacted by the proposals in this FNPRM.

1. Total Small Businesses

61. A small business is an independent business having less than 500 employees. Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. Affected small entities as defined by industry are as follows.

2. Wireline Providers

62. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

63. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500

employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by rules adopted pursuant to the FNPRM.

64. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the FNPRM.

65. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

66. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

67. Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 carriers have reported

that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by rules adopted pursuant to the FNPRM.

68. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the FNPRM.

3. Wireless Providers

69. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 show that there

were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

70. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

4. Cable Service Providers

71. Cable and Other Program Distributors. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may

be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 3,188 firms in this category that operated for the entire year. Of this total, 2,694 firms had annual receipts of under $10 million, and 504 firms had receipts of $10 million or more. Thus, the majority of these firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

72. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data shows that there are 660 cable operators in the country. Of this total, all but eleven cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

5. All Other Telecommunications

73. The Census Bureau defines this industry as including "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." The SBA has developed a small business size standard for this category; that size standard is $32.5 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,383 firms in this category that operated for the entire year. Of these, 2,346 firms had annual receipts of under $25 million and 37 firms had annual receipts of $25 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

74. The FNPRM proposes a number of rule changes that will affect reporting, recordkeeping, and other compliance requirements. Each of these changes is described below.

75. The FNPRM seeks comment on specific criteria for the Commission to use in evaluating the adequacy of substitute services in connection with applications to discontinue service pursuant to section 214, specifically seeking comment on possible criteria for evaluating the adequacy of replacement services. The FNPRM also seeks comment on effective ways to ensure compliance with the criteria and tentatively proposes requiring an officer or other authorized public representative to certify the accuracy of the statements in the application regarding the criteria. The FNPRM also seeks comment on whether and how the Commission should adopt modifications to section 63.71 of our rules, including notification to affected customers, and tentatively concludes that the Commission should extend the notice requirements for discontinuances, reductions, or impairments of service to affected Tribal entities. Further, the FNPRM seeks general comment on whether it should revise its rules to allow email-based notice or other forms of electronic or other notice of discontinuance to customers and on whether there are factors the Commission should take into consideration for certain groups of customers, such as accessibility formats, or any other issues that the Commission should consider to ensure that all affected consumers receive adequate notice. Additionally, the FNPRM eliminates the objection procedures previously available to interconnecting carriers upon receipt of a copper retirement notice and instead adopts a requirement that incumbent LECs work with interconnecting entities in good faith to ensure that those entities have the information needed to allow them to accommodate the transition with no disruption of service to their end user customers. The FNPRM seeks comment on what recourse should be

available to an interconnecting entity who believes that an incumbent LEC is not acting in good faith and whether there are limitations on how much and what types of information an incumbent LEC should be required to provide to an interconnecting entity. Finally, the Commission seeks comment on how to facilitate continuation of commercial wholesale platform services after technology transitions.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

76. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

77. The FNPRM seeks comment on each of its proposed approaches and specifically seeks additional proposals of possible criteria for evaluating the adequacy of replacement services, input on effective ways to ensure compliance with proposed criteria, and comment on whether and how the Commission should adopt modifications to section 63.71 of our rules, including notification to affected customers. The FNPRM also seeks general comment on whether: (1) It should revise its rules to allow email-based notice or other forms of electronic or other notice of discontinuance to

customers; (2) there are factors the Commission should take into consideration for certain groups of customers, such as accessibility formats; and (3) there are any other issues that the Commission should consider to ensure that all affected consumers receive adequate notice. And the FNPRM seeks comment on whether it should include Tribal governments in its notice requirements for section 214(a) discontinuance applications. The FNPRM also seeks comment on what recourse should be available to an interconnecting entity who believes that an incumbent LEC that is retiring copper is not acting in good faith to ensure that interconnecting carriers have the information they need, and whether there are limitations on how much and what types of information an incumbent LEC should be required to provide to an interconnecting entity. Finally, the Commission seeks comment on how to facilitate continuation of commercial wholesale platform services after technology transitions.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

78. None.

IV. ORDERING CLAUSES

79. Accordingly, IT IS ORDERED that, pursuant to Sections 1-4, 201, 214, 251, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201, 214, 251, 303(r), this Report and Order, Order on Reconsideration, and FNPRM of Proposed Rulemaking ARE ADOPTED.

80. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this

Report and Order and FNPRM of Proposed Rulemaking, including the Final and Initial Regulatory Flexibility Analyses, and this Order on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Communications, Communications common carriers, Defense communications, Telecommunications, Telephone.

List of Subjects in 47 CFR Part 63

Cable television, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 63 as follows:

PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

2. Amend § 63.71 by revising paragraph (a) introductory text and (d), to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

* * * * *

(a) The carrier shall notify all affected customers of the planned discontinuance, reduction, or impairment of service and shall notify and submit a copy of its application to the public utility commission and to the Governor of the State in which the discontinuance, reduction, or impairment of service is proposed, to any federally recognized Tribal Nations with authority over the Tribal lands in which the discontinuance, reduction, or impairment of service is proposed, and also to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon,

Washington, DC 20301. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. Notice shall include the following:

* * * * *

(d) The application to discontinue, reduce, or impair service, if filed by a domestic, non-dominant carrier, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant unless either:

(1) The Commission has notified the applicant that the grant will not be automatically effective, or

(2) The applicant is subject to §63.602 of this chapter and does not include with its application the certification specified in §63.602(a) of this chapter. The application to discontinue, reduce or impair service, if filed by a domestic, dominant carrier, shall be automatically granted on the 60th day after its filing with the Commission without any Commission notification to the applicant unless either

(3) The Commission has notified the applicant that the grant will not be automatically effective, or

(4) The applicant is subject to §63.602 of this chapter and does not include with its application the certification specified in §63.602(a) of this chapter. For purposes of

this section, an application will be deemed filed on the date the Commission releases public notice of the filing.

* * * * *

3. Add § 63.602 to read as follows:

§63.602 Additional contents of applications to discontinue, reduce, or impair an existing retail service in favor of a retail service based on a newer technology.

(a) In order to remain eligible for automatic grant, any domestic carrier that seeks to discontinue, reduce, or impair an existing retail service in favor of a retail service based on a newer technology shall include with its application, in addition to any other information required, a certification that there is an adequate substitute service available for the service to be discontinued, reduced, or impaired and that the substitute service provides adequate:

(1) Network capacity and reliability;

(2) Service quality;

(3) Device and service interoperability, including interoperability with vital third-party services and devices;

(4) Service for individuals with disabilities, including compatibility with assistive technologies;

(5) PSAP and 9-1-1 service;

(6) Cybersecurity;

(7) Service functionality; and

(8) Coverage.

(b) Any domestic carrier that seeks to discontinue, reduce, or impair an existing retail service in favor of a retail service based on a newer technology that does not file the certification described in paragraph (a) of this section shall include with its application, in addition to any other information required, supporting evidence regarding the degree to which there is an adequate substitute or substitutes available for the service to be discontinued, reduced, or impaired, and supporting evidence regarding the degree to which the substitute service(s) provide adequate:

(1) Network capacity and reliability;

(2) Service quality;

(3) Device and service interoperability, including interoperability with vital third-party services and devices;

(4) Service for individuals with disabilities, including compatibility with assistive technologies;

(5) PSAP and 9-1-1 service;

(6) Cybersecurity;

(7) Service functionality; and

(8) Coverage.

(c) A certification pursuant to paragraph (a) of this section must:

(1) -Set forth a detailed statement explaining the basis for such certification;

(2) Be executed by an officer or other authorized representative of the applicant; and

(3) Meet the requirements of §1.16 of this chapter.

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